

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.
★ JUL 27 2006 ★
BROOKLYN OFFICE

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FRANK JONES,

Petitioner,

MEMORANDUM
AND ORDER

-against-

CV 05 3527(JBW)

DONNA LEWIN, Superintendent,
Hudson Correctional Facility,

Respondent.

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JACK B. WEINSTEIN, *Senior District Judge*:

Petitioner's original petition, filed on February 18, 2002, for a writ of habeas corpus was dismissed on June 16, 2003 (02 CV 1347) for reasons of untimeliness and lack of merit. See amended Judgment, Order and Memorandum dated July 16, 2003, 02 CV 1347, 03 Misc. 0666. See also Jones v. Dept. of Corrections, 216 F.R.D. 237 (E.D.N.Y. 2003). A certificate of appealability was denied by the Court of Appeals for the Second Circuit on March 19, 2004.

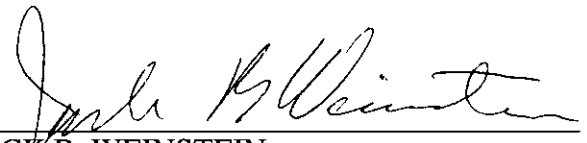
After repetitive state court post-conviction applications, defendant filed his present, second, habeas corpus petition in this court by papers dated July 18, 2005. Counsel was appointed in this court and the case stayed to permit further applications for relief in state court. A hearing was held on July 25, 2006 at which counsel for petitioner was heard and in addition petitioner argued the case by telephone. Respondent moved to transfer the case to the Court of Appeals for the Second Circuit as a Second petition.

The present petition raises the same issues as did the first petition. No new issues are posed. It should be dismissed. 28 U.S.C. § 2244(b)(1).

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A second petition requires the petitioner to move in the Court of Appeals for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(3)(A). The case is respectfully referred to the Court of Appeals for the Second Circuit in the interest of justice. The Clerk of this court is directed to transfer the case to that court. 28 U.S.C. § 1631.

SO ORDERED.



JACK B. WEINSTEIN
SENIOR UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York
July 25, 2006